In the matter of the
FCC Recycling (UK) Limited Inquiry
Environmental Permitting (England and Wales)
Regulations 2016

Planning Inspector Ref: APP/EPR/636, 651 and 652

FCC RECYCLING (UK) LIMITED and 3C WASTE LIMITED
DANESHILL LANDFILL and MAW GREEN LANDFILL

Appellant

And

ENVIRONMENT AGENCY

Defendant

THE ENVIRONMENT AGENCY'S RESPONSE: TO THE ADDITIONAL DOCUMENTATION SERVED BY THE APPELLANT

DATE: 20 February 2024

Comments on the 'Appellant Cojoined Rule 6 Statement'.

Section 1: Introduction

1. This is the Environment Agency's ("the Agency") final comments in response to appeals by FCC Recycling (UK) Limited, company number: 02674166, and 3C Waste Limited company number: 02674166 (both referred to here as the "the Appellant"). The appeals are made under the provisions of Regulation 31 of the Environmental Permitting (England and Wales) Regulations 2016 ("EPR 2016").

2. The Appellant is appealing the Agency's decision dated 9 December 2022, to partially refuse application reference EPR/NP3538MF/V009 for Daneshill Landfill, Daneshill Road, Retford, Nottinghamshire, DN22 8RB ("the DH Site"), for a permit variation to accept and treat soils containing asbestos at a Soil Treatment Facility ("STF"). The Appellant is also appealing conditions imposed by the Agency Initiated Variation ("AIV") reference EPR/NP3538MF/V010 of the Environmental Permit ("EP") issued 29 September 2023 ("the September 2023 EP") for the DH Site. The Appellant is also appealing against conditions imposed in AIV reference EPR/BS7722ID/V010 of the EP issued 5 October 2023 ("the October 2023 EP") for Maw Green Landfill Site, Maw Green Road, Coppenhall, Crewe, Cheshire, CW1 5NG ("the MG Site"). Separate Agency Statements of case ("SoC") were submitted AIVs for the DH Site and the MG Site.

3. All three appeals are being heard together due to the similar issues involved. This final comments document relates to the September 2023 EP for the DH Site and the October 2023 EP for the MG Site, as final comments have already been submitted separately for the partial refusal of the DH Site STF (the "DH FC document"). Where these are relevant to the September 2023 EP or October 2023 EP it shall be noted.

Section 2: The Appeal Sites

4. The DH Site is a non-hazardous landfill undergoing restoration. The appellant stated intent for the STF is to provide some recovered soils for that restoration. The Appellant comments that the:

   "*restoration of the landfill void will be complete within 10 years (subject to sufficient waste arisings, including hazardous waste to be pre-treated at the Site prior to use in the restoration of the landfill).*"

   Agency site-based permits issued under the Environmental Permitting Regulations (2016) (the "EPR") such as the DH Site STF are not time-limited. A permit will remain in force until either (1) the permit holder surrenders the permit (subject to the Agency's approval regarding pollution risk resulting from the operation of the regulated facility); or (2) in certain circumstances the Agency may consider it needs to revoke the permit. Therefore the Agency must regard the STF as a permanent facility. A timescale granted under the planning permission for the site is a requirement separate from EPR requirements and may be amended separately under the planning regime.

5. Comments on the Appellant's selection of sensitive receptors for the DH Site are made in the DH FC document.

6. For the MG Site the New Treatment Area Sensitive Receptors Plan Drawing Number 5193-CAU-XX-XX-DR-V-1804 submitted with the Environmental Setting and Installation Design - Addendum 2022 (starting page 241 of the Appellant's Grounds of Appeal Bundle for MG) appears to be currently representative for the MG Site.

However the Agency notes from our GIS system (Figure 1 below) that there appears to be an area of development extending northeast of Hotspur Road in the area of the blue circle below (the permitted area of the landfill is shown as the pink area and the red point marks the grid reference provided by the Appellant for the STF). An aerial photograph (Figure 2 below) shows housing on Hotspur Road under construction, so it may be this is another area of new housing development. The potential new receptors should be considered (we note these are discussed with regard to the Appellant's proposed emission modelling receptors discussed in Section 7 below). We note also the Appellant uses the same Sensitive Receptors Plan for their Dust and Emissions Management Plan ("DEMP") for the STF.

Figure 1: GIS drawing showing area of development

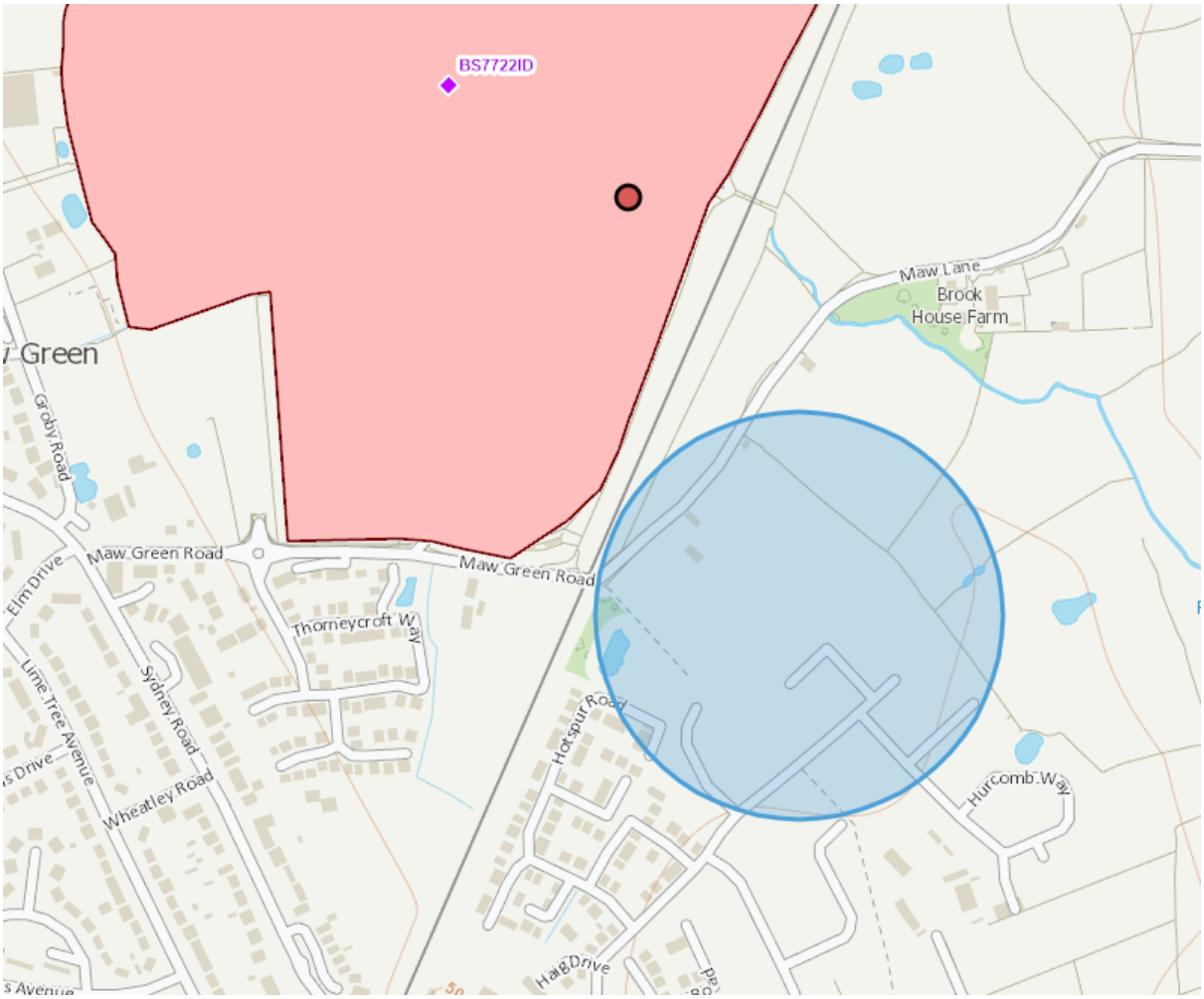


Figure 2: Aerial photo of Hotspur Road area

7. Wind speed and direction data is also provided within the DEMP:

3.4 Meteorological Setting

3.4.1 Fugitive emissions of dust, litter, odour and noise from the site are likely to be affected by local weather conditions, in particular by wind direction. Wind statistics observed from the closest weather station, Leek Thorncliffe, located approximately 28km east from the site are considered to be representative of the typical conditions at the site (Figure 3 below).

3.4.2 A review of the data recorded daily between April 2010 and September 2022 on the Windfinder.com website indicates that the most dominant wind direction is from the south-southwest towards the north-northeast.

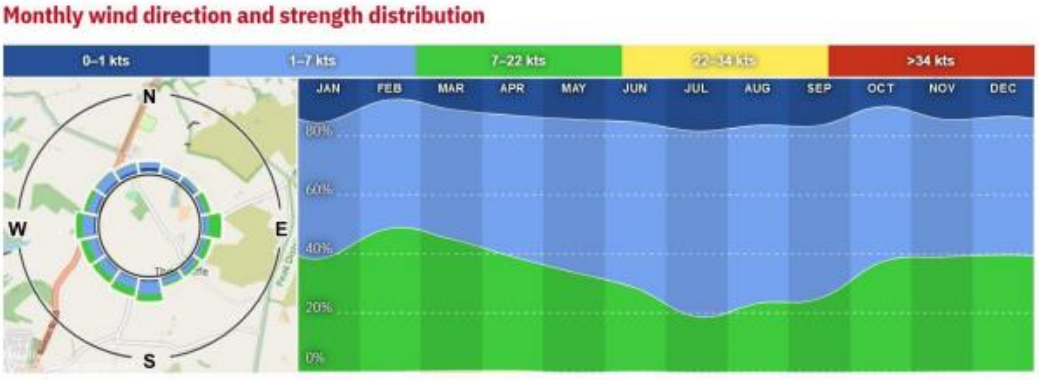


Figure 3 – Leek Thorncliffe – average annual wind direction & strength 2010-2022

8. There appears to be a weather station closer than Leek Thorncliffe (28 km east) – at Reaseheath Hall, Nantwich, approximately 7 km southwest of the MG Site (Synoptic and climate stations - Met Office). The Appellant should check whether there is any significant difference in wind speed or direction from the Leek Thorncliffe station.

9. However, for both the DH and MG site receptors, the Agency draws attention to Technical Guidance Note M17 Monitoring of particulate matter in ambient air around waste facilities ("M17"). The Agency's M17 guidance states (emphasis added):

> *"7.4.3 Guideline limits for fibres*
> *Asbestos is a proven human carcinogen (IARC Group 1). No safe level can be proposed for asbestos because a threshold is not known to exist.* ***Exposure should therefore be kept as low as possible and asbestos should not be found above background levels at site boundaries."***

This requirement for no asbestos fibres above background levels at the site boundary should be considered the objective.

Section 3: Procedural Background

10. The Appellant states again that the STF lifetime at both DH and MG will be time-limited. The Agency refers to the points made in section 2 above regarding time-limitations and the EPR.

Section 4: Background and details of the proposed activity

11. The Appellant's assertion of in Section 4.2 of the SoC that for both DH and MG the Appellant does not propose that the mechanical screener will be enclosed and/or fitted with a HEPA filter is the key issue. The Agency has made the case for what is considered BAT for such facilities in the previously submitted SoCs for DH and MG. The Agency has previously also agreed that (where treatment is undertaken in a manner that meets BAT and protects the environment) soil recovery from such processes is beneficial as reuse of the soil is a better environmental outcome than landfill. We have also agreed in our SoCs with the Appellant over the use of the term 'cover' rather than restoration materials for the recovered soils in the varied permit conditions.

Section 5: EA Decision Documents

12. No comments.

Section 6: Statement of Case

13. No comments.

Section 7: Asbestos emissions from the treatment of asbestos contaminated soils

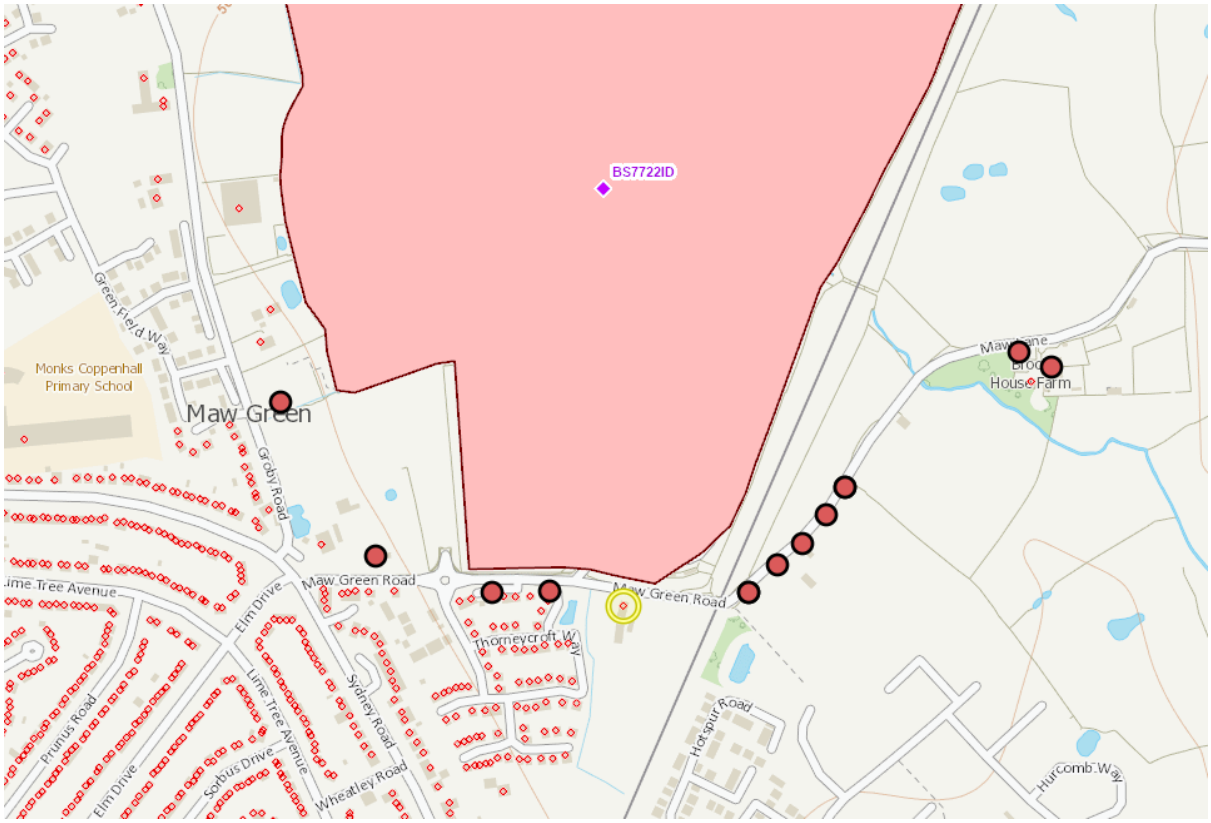
14. Regarding paragraph 7.7 – the Appellant mentions *"..calculations indicate that the greatest emission activities are likely to be vehicle movement on the concrete slab.."* The Agency has pointed out that a concrete 'slab' is not proposed by the Appellant for the asbestos treatment areas at DH or MG. This is covered in Section 8 on BAT below.

15. Regarding The Agency's position on the monitoring data has been set out in the DH SoC and supporting documents. A large volume of monitoring data for the MG site and another site (Edwin Richards Quarry) was provided by the Appellant on 7 February 2024 and the Agency is currently assessing this. A request for more time to assess this data prior to the Appeal was submitted and has been rejected.

16. Regarding the proposed AERMOD modelling, the Agency has already commented on the requirements in the DH SoC. Any modelling report (and modelling files) should be provided well in advance of the Appeal, as it would need specialised technical assessment. To date the Agency has not received a modelling report or supporting information for the DH Site. The same request and requirements are also made for the MG Site.

17. The proposed receptors for DH have been discussed in the DH SoC. Section 2 above covers our consideration of the receptors for MG, and the Agency is reassured that the area of new development is included here. We note that there is one potential residential address in a gap on the southern boundary which could be included for better coverage (circled in yellow below):

Figure 3: Maw green proposed receptors



18. Regarding the Risk Estimation section, we have already made comments in the DH SoC and supporting documents, and do not repeat them here.

Section 8: BAT

19. The Agency agrees with the summary of the legislative framework set out by the Appellant, but respectfully disagrees with the Appellant's assertion that the activity complies with the requirements, for the reasons already set out in the Agency's SoCs for DH and MG.

20. The Agency has also previously set out that implementation of the waste hierarchy does not remove the requirement to comply with other legislative requirements such as BAT. The Agency is supportive of efforts to move waste up the waste hierarchy by recovering it, provided all legislative requirements are met.

21. In 8.13 the Appellant states:

> *The reception and storage areas and all waste treatment areas will be located on an impermeable surface with an integrated drainage collection and retention system.*

This is **not** what the Agency understands to constitute an impermeable surface. As set out in the September 2023 EP SoC for DH an impermeable surface is defined as:

> *"impermeable surface" means a surface or pavement constructed and maintained to a standard sufficient to prevent the transmission of liquids beyond the pavement surface.*

Paragraphs 29 to 31 of our September 2023 EP DH SoC sets out why the Agency requires impermeable paving and details sites where asbestos is handled which all have impermeable surfaces in accordance with the definition above.

22. In addition to DH, it is apparent that the Appellant will also provide MG with surfacing equivalent to DH, even though when previously operated at MG the asbestos screening process was undertaken on an area benefitting from a concreted surface (as evidenced by the photographs within the Appellant's Grounds of Appeal documentation for MG). The Appellant's proposals for both DH and MG are **not** on what the Agency would consider an impermeable surface.

23. In paragraph 8.16 the Appellant discusses the re-use criteria for the recovered soils as restoration on the landfill. For the avoidance of doubt these criteria are not part of the STF applications and do not form part of the appeal. The Agency has not commented on them other than to say recovered soils could be used subject to agreement by the Agency under the landfill site's restoration plan.

24. In paragraph 8.24 the Appellant states that as no comments or concerns were raised regarding the *Treatment Process Description and Indicative BAT review July 2021* (Appeal Document 10, pdf pages 285 to 304) and they assume that the Agency accepts these aspects of BAT are appropriate and acceptable. This document relates to the overall STF proposal by the Appellant. Where the techniques relate to non-asbestos related activities at the STF, these are not part of the appeal. With regard to the asbestos

techniques, the Agency's position on what constitutes BAT for asbestos treatment has been set out in the SoCs, associated supporting documents and applied in the conditions set in the varied permits for the DH and MG sites.

25. Regarding paragraphs 8.27 to 8.29, for the avoidance of doubt, the BAT Conclusions ("BATCs") were published in August 2018 and were applicable for new activities under IED from that date. The Chemical waste: appropriate measures guidance was published on 18 November 2020 and applied to all new activities from that time. S5.06 was still relevant for new sites in the interim period and for existing activities until current permits were reviewed.

26. With regard the UKHSA consultation response for EPR/NP3538MF – this application pre-dated the UKHSA, and Public Health England (PHE) was the preceding body and consultee. The PHE consultation response is appended.

27. Regarding the section on '*The need for and the benefits of the recovery of soil'*, the Agency's position on supporting reuse has been set out above and does not need repeating here.

Section 9: Permit variations – appeals two and three

28. Regarding the statements made by the Appellant regarding the grounds of appeal, the Agency considers that it has adequately outlined the case in the SoCs for DH and MG and there is no need to comment further here. The SoCs for DH and MG AIVs outline clearly the reasons for the conditions which have been applied to each site.

29. With specific regard to paragraph 9.16 regarding efforts to discharge of pre-operational requirements at Edwin Richard's Quarry ("ERQ") this is covered in the SoCs for DH and MG AIVs (see paragraphs 95 to 99 of the DH SoC). Paragraph 99 states concludes:

> *The Appellant provided no demonstration that all emissions are routed/directed to the abatement, instead it was outlined that the emission would be allowed to spread throughout the building and drawn towards the HEPA filter. This submission therefore did not demonstrate how the emission was sufficiently enclosed to be contained and routed/directed to abatement to prevent spread and entrainment of fibres over a larger area and possible resuspension. The Agency therefore did not accept this proposal as discharging the pre-operational condition.*

30. With regard to paragraph 9.17, the Agency has stated clearly in the previously submitted SoCs for DH and MG the position with regard to compliance with BAT under EPR, the waste hierarchy and the Hazardous Waste (England and Wales) Regulations 2005.

31. With regard to the footnote 17 on page 36 of the Appellant's SoC, extraction from the handpicking line is not required in this case. As we have previously stated, the requirement to extract and abate emissions is for the mechanical screening process, not the enclosed picking line. The picking line is not a high energy process, and the waste is proposed to be wetted on the way into the picking station. The measures should be sufficient to minimise emissions from the handpicking process.

32. With regard to the position of mobile plant and stationary installations set out by the Appellant in paragraph 9.54, the Agency has stated in the previously submitted SoCs for DH and MG the differences between the risks posed by deployed mobile plant (short-term) and site-based installation (long-term) treatment activities and does not repeat them here.

33. The IED applies BAT to installation activities. The requirements for installations under IED (and EPR) are set are set out in the Legal Requirements Section of the SoC for DH. A mobile plant deployed on a short-term basis for the treatment of asbestos contaminated soils would not constitute an installation under IED and EPR. In EPR a distinction is made between installation and mobile plant. Regulation 8 states:

8.—(1) In these Regulations, "regulated facility" means any of the following—

(a) an installation;

(b) mobile plant;

(c) a waste operation;

…

Schedule 1 of EPR defines an installation as:

"installation" means—

(a) a stationary technical unit where one or more activities are carried on, and

(b) any other location on the same site where any other directly associated activities are carried on,

and references to an installation include references to part of an installation;

Mobile plant is itself defined under EPR Regulation 2:

"mobile plant", in relation to England, means any of the following—

(a) Part B mobile plant;

(b) waste mobile plant;

(c) mobile medium combustion plant;

(d) groundwater mobile plant;

And waste mobile plant as:

"waste mobile plant" means plant that is—

(a) designed to move or be moved whether on roads or other land,

(b) used to carry on a waste operation, and

(c) not an installation or Part B mobile plant;

34. It is clear that a waste treatment activity that is considered mobile (and outside the definition of a Part B installation) rather than stationary would not be defined as an installation but would instead be within the definition of mobile plant (and waste mobile plant). An exception to this would be a waste mobile plant that is deployed in one place for a long enough period that the Agency could decide it is no longer mobile but rather is actually a stationary fixed plant (and therefore an installation subject to BAT).

35. With regard to paragraphs 9.57 to 9.58 regarding inconsistency between permits conditions for DH and MG, the main requirements and operational controls for treatment of soils containing asbestos are the same for both DH and MG. Where there are minor differences for example on the tonnages being treated at each site, the Agency has already stated that it is open to work with the Appellant to accommodate their operational needs within the permits, providing that the other requirements of the conditions are complied with.

Section 10: Conclusion

36. The Agency has no comments on the concluding remarks other than to note that the Agency also reserves the right to call additional experts and/or other evidence in support of the Agency's position.

Appendices

1. PHE consultation response for EPR/NP3538MF

Public Health England

Environmental Hazards and Emergencies Department
Centre for Radiation, Chemical and Environmental Hazards (CRCE)
Seaton House
City Link
London Road
Nottingham
NG2 4LA

T 0300 3033049

envpermitting@phe.gov.uk

www.gov.uk/phe

Permitting Support Officer
Environment Agency
Permitting Support Centre
Quadrant 2
99 Parkway Avenue
Sheffield
S9 4WF

10th September 2021

Dear Permitting Support,

Environmental Permit variation application submitted by FCC Recycling (UK) Limited for Daneshill Landfill Site, Daneshill Road, Lound, Nottinghamshire, DN22 8RB
Application Reference: EPR/NP3538MF/V009

Thank you for forwarding a copy of this application to vary the existing permit to include a soil treatment facility to the Centre for Radiation, Chemical and Environmental Hazards (CRCE) at Public Health England on 18th August 2021.

As this site is already operational, it is assumed that the Environment Agency (EA) are satisfied with the operator's competence and compliance with existing permit conditions. The issue of concern relates to emissions to air and the potential for odour.

Following our assessment of the submitted documents, we request that the EA takes account of the following concerns when considering appropriate permit conditions:

- The air dispersion modelling of pollutants (specifically, odours and volatile organic compounds) assume all emissions are released from the surface of the biofilter. It will therefore be important that the EA are satisfied that all measures are in place to minimise odour impacting local residents. We would encourage that routine compliance checks and odour audits are undertaken to ensure agreed management actions.
- That the air dispersion modelling to be updated to reflect the new short-term (24 hour) Environment Assessment Level for benzene.
- That the EA ensure that the operator has suitable waste acceptance to minimise presence of friable asbestos and stockpile mitigation to prevent the release of any fibrous content prior to treatment.

Any information arising from these recommendations should be sent to Public Health England for consideration when it becomes available. Such information could affect the comments made in this response.

Kind regards

Dr Sarah Robertson
Principal Environmental Public Health Scientist